

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(Filed: July 24, 2023)

STATE OF RHODE ISLAND

:
:
:
:
:

VS.

P2-2005-1100AG

EDWIN REYES

DECISION

MONTALBANO, J. Before this Court is Edwin Reyes’s (Mr. Reyes or Appellant) appeal of a Superior Court Magistrate’s (the Magistrate) Order, dated August 15, 2022, denying Mr. Reyes’s motion to return seized property. Jurisdiction is pursuant to G.L. 1956 § 8-2-11.1(d).

I

Facts and Travel

The relevant facts are drawn from the record, including testimony adduced at the March 14, 2023 hearing in this Court. (Hr’g Tr. Mar. 14, 2023 (Mar. Tr.).)

The subject of this appeal is the rightful possessory ownership of \$52,000 in cash that the Providence High Intensity Drug Trafficking Areas (HIDTA) unit¹ (the HIDTA Unit) seized from 420 Woodward Road, Apartment 29, North Providence, R.I., on May 3, 2004. (Mar. Tr. 19:21, 24:1-8) (Testimony of then-Detective Sergeant Joseph DelPrete (now Police Chief for the Glocester Police Department) (Detective DelPrete).)

¹ See 21 U.S.C. § 1706(a)(1) (establishing the HIDTA program); *see also id.* (a)(2)((A)-(D)) (describing that the program’s purpose is to “facilitat[e] cooperation among Federal, State, local, and tribal law enforcement agencies to share information and implement coordinated enforcement activities . . . [and] support[] coordinated law enforcement strategies which maximize use of available resources to reduce the supply of illegal drugs in designated areas and in the United States as a whole”).

Detective DelPrete testified that in May 2004, the time of the seizure, he was the supervisor of the HIDTA Unit; a team of law enforcement professionals composed of agents employed by the State Police, Local Police, and Federal Bureau of Investigation (FBI). *Id.* at 18:24-19:24. Around May 2004, the HIDTA Unit was investigating a suspected crack cocaine deal believed to take place on Alverson Avenue in Providence. *Id.* at 19:14-23. The target of the HIDTA Unit was an individual named Juan Velasquez. *See id.* at 19:25-20:1. The HIDTA Unit secured a warrant to search the second-floor apartment, supposedly owned by Mr. Velasquez and believed to be his “stash house,” at 176 Alverson Avenue in Providence and executed same on May 3, 2004 at approximately 7:30 p.m. *Id.* at 20:2-25, 21:19-21. Detectives seized cocaine paste, cocaine powder, crack cocaine (almost eight pounds of cocaine in total), manufacturing equipment, a vehicle, and around \$25,000 in cash. *Id.* at 21:22-22:8.

Mr. Velasquez was not present at the time of the seizure, *id.* at 22:9-11, so the HIDTA Unit sought to find him. *Id.* at 23:15-24. Mr. Velasquez had been surveilled frequenting 420 Woodward Road, Apartment 29, in North Providence, and the HIDTA Unit went there to look for him. *Id.* at 21:14-18; *see also id.* at 24:1-10 (explaining that Mr. Velasquez was believed to have a girlfriend at that address and would visit there with some regularity).

Detective DelPrete testified that when the HIDTA Unit arrived at 420 Woodward Road, Apartment 29,

“one of the officers who was in plain clothes knocked on the door several times. We heard a female voice ask who was at the door, and we identified ourselves as State Police. A lot of commotion was going on at the time, movement inside of the apartment. Then we were alerted by a neighbor that two individuals were jumping out the second floor of that apartment, and that’s when we entered and we apprehended the two individuals.” *Id.* at 25:10-19.

Upon entering the apartment, the HIDTA Unit initially encountered an individual they later

identified as Mr. Reyes and a woman they later identified as Ms. Perez. *Id.* at 26:5-6. Detective DelPrete advised Mr. Reyes that the HIDTA Unit was looking for Mr. Velasquez, and Mr. Reyes responded that he did not know Mr. Velasquez's whereabouts. (Mar. Tr. 26:21:25.)

Detective DelPrete then asked Mr. Reyes for permission to search the apartment. *Id.* at 27:1-3. Mr. Reyes acceded to the request, expressing his approval both verbally and in a written consent form. *Id.* at 27:3-4 (“[W]e received a verbal and written consent for the apartment.”); *see also id.* at 27:13-28:15 (Detective DelPrete explaining that Mr. Reyes signed the form in his presence.). Detective DelPrete testified on cross-examination that he believed Mr. Reyes showed paperwork to the HIDTA Unit indicating that he (Mr. Reyes) was the lawful owner of the 420 Woodward Road residence. *Id.* at 36:10-11. *But see id.* at 39:5-8 (the witness testifying on redirect that he doesn't recall if he saw anything that would indicate Mr. Reyes owned the apartment).

A search of the 420 Woodward Road apartment yielded a firearm and “also a plastic bag with \$52,000 in cash in \$10,000 denominations wrapped in elastics[,]” which the officers seized. *Id.* at 29:20-24. Detective DelPrete explained that he retrieved the money from a walk-in closet adjoining Mr. Reyes's bedroom. *Id.* at 36:20-37:22. The money was located between Mr. Reyes's clothes on one of the shelves in the closet. *Id.* at 38:4-16. Detective DelPrete testified that Mr. Reyes admitted the clothing and shoes in the closet were his. *Id.* at 37:23-38:2.

Detective DelPrete asked Mr. Reyes about the firearm, and Mr. Reyes denied ownership. *Id.* at 29:25-30:3 (“He denied any ownership.”). In response to a question asking whether he had asked Mr. Reyes about the \$52,000 in cash, Detective DelPrete said “[a]t least two times we spoke of that, and he disavowed all ownership of that currency.” *Id.* at 30:5-6. Detective DelPrete further testified that Mr. Reyes indicated that he did not know who else would have access to his closet or apartment. *Id.* at 30:12-15. The money was thereafter seized by the HIDTA Unit, *id.* at 30:18-19,

and Mr. Reyes was arrested and transported to the Rhode Island State Police Lincoln Woods Barracks (RISP Lincoln Woods Barracks). *Id.* at 30:16-17, 20-22.

At the RISP Lincoln Woods Barracks, Mr. Reyes signed a form acknowledging that he had been notified of, and understood, his pre-interrogation rights under the Fifth and Sixth Amendments as required by *Miranda v. Arizona*, 384 U.S. 436 (1966).² *Id.* at 31:20-32:24. After being advised of his rights, Mr. Reyes requested to speak to an attorney and questioning ceased. *Id.* at 31:1-3. Detective DelPrete testified that Detective Kevin Barry asked Mr. Reyes to sign a property release, but that Mr. Reyes would not sign the form. *Id.* at 31:4-6, 18-19.

The officers tested the money using an Itemiser contraband detector scan, which detects narcotics and explosive materials. *Id.* at 33:3-8. The scan “reported trace evidence of cocaine on the money.” *Id.* at 33:9-11.

Mr. Reyes was charged by criminal information with possessing a firearm after having been convicted of a crime of violence and with receiving stolen goods (the nine-millimeter Beretta Model 92 pistol) valued over \$500. *Id.* at 30:24-25; *see also* Criminal Information filed on April 20, 2005. On September 30, 2005 the State dismissed both charges under Rule 48(a) of the Superior Court Rules of Criminal Procedure. *See* Dismissal Under Criminal Rule 48(a) filed October 3, 2005. The dismissal form indicates that the reason for the dismissal was “[i]n the interest of justice.” *Id.* The record indicates that prior to the dismissal there was never a suppression

² “[W]hen an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.” *Miranda v. Arizona*, 384 U.S. 436, 478-79 (1966).

hearing at which either the legality of the search was considered or that Mr. Reyes's constitutional rights under the Fifth and Sixth Amendments were violated. (Mar. Tr. at 35:18-20.)

Detective DelPrete testified in response to the question of what was done with the \$52,000 in cash, that, typically, after taking currency into their possession, the State Police would put it into an escrow account with their finance director. *Id.* at 33:13-16. He further testified that the money in this case was ultimately turned over to the General Treasurer. *Id.* at 33:17-18.

Director Carol Aguasvivas (Director Aguasvivas) of the State of Rhode Island Office of the General Treasurer, Unclaimed Property Division (Unclaimed Property Division), also testified at the March 14, 2023 hearing. *Id.* at 39:19-40:5. Director Aguasvivas testified that she reviewed Mr. Reyes's file in preparation for her testimony. *Id.* at 40:14-15. Describing the general procedures for processing money turned over to the Unclaimed Property Division by the Rhode Island State Police, Director Aguasvivas explained that each year during "holder season, October through November 1st," State agencies (such as the State Police) file a report describing unclaimed property in their possession and listing potential owners. *Id.* at 40:21-25. Director Aguasvivas testified that once the Unclaimed Property Division receives property from the State Police, its procedure is to "do a reconciliation of the report and then we will post on RI unclaimed property dot-com the list of potential owners and the amount of money that each person has claimable." *Id.* at 42:13-16. Before returning money to a claimant, Director Aguasvivas explained that the Unclaimed Property Division requests a copy of the claimant's photo I.D. and proof of address, as well as proof "that they have some business with the holder." *Id.* at 45:11-14. Director Aguasvivas clarified that under the Unclaimed Property Division's processes, a claimant bears the burden of demonstrating that he owns the money. *Id.* at 46:16-19.

Director Aguasvivas testified that she believes the State Police filed such a "holding report"

in 2008 and transmitted the funds (including the money at issue in this case) to the Unclaimed Property Division. *Id.* at 41:1-6; *see also id.* at Ex. 4 (hearing exhibit) (Rhode Island State Police holding report for the year 2008). According to Director Aguasvivas, the report lists a claim number (5326439) and reflects that the Unclaimed Property Division received possession of \$52,000. *Id.* at 42:3-10.

Director Aguasvivas reviewed an exhibit, *see id.* at Ex. 4, which indicated that the \$52,000 was listed under “Edwin Reyes.” *Id.* at 42:17-20. However, she testified that this designation did “not mean that he is the owner. The funds were found in the vicinity or the location where Mr. Reyes was and that’s why it was turned in to us. Maybe he is the proxy or the person that was closest to the funds.” *Id.* at 42:20-24. The witness did concede that the designation meant Mr. Reyes was considered a “possible owner.” *Id.* at 42:25-43:1. Moreover, Director Aguasvivas conceded that the Unclaimed Property Division is in possession of the police report. *Id.* at 47:19-22. Reviewing the report, Director Aguasvivas insisted that the report listed Mr. Reyes as merely the potential owner of the Woodward Road residence. *Id.* at 48:9.

Director Aguasvivas testified that Mr. Reyes filed a claim for the \$52,000 with the Unclaimed Property Division on December 16, 2020. *Id.* at 43:2-21, 46:5-9; *see also id.* at Ex. 5 (hearing exhibit). Director Aguasvivas indicated that Mr. Reyes provided a photo I.D. and his social security number, along with his signed claim form. She stated that the Unclaimed Property Division did not receive address verification or “proof of doing business with the holder.” *Id.* at 46:12-15. Director Aguasvivas indicated that the Unclaimed Property Division’s legal counsel had looked for a Court order compelling disbursement of the funds, but did not find evidence of such a decree. *Id.* at 44:6-8. Moreover, Director Aguasvivas testified that the Unclaimed Property Division did a LexisNexis background check on Mr. Reyes, which did not list the Woodward Road

location as a prior address under his name. *Id.* at 45:15-19. Director Aguasvivas testified further that the Unclaimed Property Division required proof of Mr. Reyes’s relationship to the State Police, but “looked at the report, and it just said that the funds were not his.” *Id.* at 45:19-21. In response to a question asking what caused her to conclude that Mr. Reyes did not have anything to do with the apartment, Director Aguasvivas described that “the background check on the address and the statement from Mr. Reyes to the police officers saying that the property was not his and that he refused to sign ownership” were the principal reasons. *Id.* at 51:14-17; *see also id.* at 52:12-16. Director Aguasvivas further testified that Mr. Reyes’s “I.D. card was from New York so [the Unclaimed Property Division] couldn’t use his license to determine residency.” *Id.* at 52:17-18. She acknowledged that from receipt of the funds in 2008, *id.* at 47:12-48:3, until 2020, no other person made a claim to the funds. *Id.* at 43:25-44:2.

The record contains an undated letter from the Office of the General Treasurer denying Mr. Reyes’s claim. The document, drafted in response to Mr. Reyes’s claim for the money, provides:

“After careful review of the information you provided, we have determined that your claim is denied, as this Office has not received documentation sufficient to establish ownership of the property in question. Specifically, as noted the police report from May 3, 2004, you disclaimed ownership to the property multiple times. Additionally, no court order dictating the property be returned to you was every [*sic*] located or produced. In conversation with your counsel on April 20, 2022, he explained that he does not in fact have such an order.” *See* Ex. 5 (hearing exhibit) (Letter Re: Unclaimed Property Claim ID: 5326439.).

Mr. Reyes filed a Motion for Return of Seized property on August 3, 2022, *see* Docket, and the State filed an objection on August 11, 2022. *See id.* The motion was heard and decided by a magistrate of the Superior Court on August 15, 2022. *See* Order. The Magistrate’s Order reads, in its entirety: “The above-entitled matter came on to be heard before Magistrate McBurney of the Superior Court on August 15, 2022 and after due consideration thereon, it is hereby: ORDERED,

ADJUDGED AND DECREED . . . [t]he defendant’s motion to return seized property is denied.”

Id. Mr. Reyes filed a notice of appeal of the Magistrate’s Order on the same date. *See* Notice of Appeal.

On August 19, 2022, Mr. Reyes filed an Amended Motion for Return of Seized Property. *See* Docket. The State filed its supplemental objection to Mr. Reyes’s amended motion on November 3, 2022.³ *See id.* This Court conducted an evidentiary hearing pursuant to Rule 2.9(h) of the Superior Court Rules of Practice on March 14, 2023. Super. Ct. R.P. 2.9(h).

II

Standard of Review

Review of a Magistrate’s Decision

A Superior Court justice’s review of a magistrate’s decision is governed by § 8-2-11.1(d) which provides, in pertinent part:

“A party aggrieved by an order entered by the . . . magistrate shall be entitled to a review of the order by a justice of the superior court. Unless otherwise provided in the rules of procedure of the court, the review shall be on the record and appellate in nature. The court shall, by rules of procedure, establish procedures for review of orders entered by the . . . magistrate[.]” Section 8-2-11.1(d).

Rule 2.9(h) of the Superior Court Rules of Practice presently governs the review standard, and provides:

“The Superior Court justice shall make a de novo determination of those portions to which the appeal is directed and may accept, reject, or modify, in whole or in part, the judgment, order, or decree of the magistrate. The justice, however, need not formally conduct a new hearing and may consider the record developed before the magistrate, making his or her own determination based on that record whether there is competent evidence upon which the magistrate’s judgment, order, or decree rests. The justice may also

³ On January 9, 2023, Mr. Reyes filed his Memorandum in Support of Motion to Return Seized Property (Reyes’s Mem.). On March 9, 2023, the State filed its Second Supplemental Objection to Defendant’s Motion to Return Seized Property. (State’s Obj.)

receive further evidence, recall witnesses or recommit the matter with instructions.” Super. Ct. R.P. 2.9(h).

The record on appeal includes “[t]he original papers and exhibits filed with the Superior Court, the transcript of the proceedings, and the docket entries[.]” Super. Ct. R.P. 2.9(f).

III

Analysis

A

Review of the Record and Relevant Procedural and Statutory Provisions

General Laws 1956 § 12-5-7 dictates the procedures which must be followed to dispose of seized property. The statute provides, in pertinent part:

“(a) The property seized shall be safely kept by the officer seizing it, under the direction of the court, *so long as may be necessary for the purpose of being used as evidence in any case.*

“(b) As soon as may be thereafter, if the property is subject to forfeiture, further proceedings shall be had on the property for forfeiture as is prescribed by law in chapter 21 of this title.

“(c) If the property seized was stolen or otherwise unlawfully taken from the owner, *or is not found to have been unlawfully used or intended for unlawful use*, or is found to have been unlawfully used without the knowledge of the owner, it shall be returned to the person legally entitled to its possession.” (Emphasis added.)

Mr. Reyes’s Amended Motion for Return of Seized Property seeks return of the \$52,000 in cash which was seized from his apartment at 420 Woodward Road on May 3, 2004.

Mr. Reyes was criminally charged by information in Case No. P2/05-1100AG filed by the State on April 20, 2005. Thereafter on October 3, 2005 those criminal charges against Mr. Reyes were dismissed by the State. Section 12-5-7 clearly contemplates that the money seized from Mr. Reyes must be safely kept by the State Police only as long as was necessary for the purpose of being used as evidence in any (criminal) case. Section 12-5-7(a). From and after the seizure by the State of the \$52,000 seized from Mr. Reyes’s apartment on May 3, 2004, until the dismissal of the criminal charges against Mr. Reyes on October 3, 2005, the property seized was not used as

evidence in any case. In fact, the Court notes that the property seized was never used as evidence in any case at any time prior to October 3, 2005 or any time after October 3, 2005. Therefore, since the seized property was not subject to forfeiture, the question before the Court is whether the seized property was either stolen, unlawfully used or intended for unlawful use, or unlawfully used without the knowledge of the owner. Section 12-5-7(c). The record in this case, including the record of the March 14, 2023 evidentiary hearing before this Court, discloses no such prohibited use of the seized property by Mr. Reyes. Consequently, the State was affirmatively required to return the seized \$52,000 at issue in this case to the person legally entitled to its possession. *See State v. DeMasi*, 447 A.2d 1139, 1140 (R.I. 1982).

B

The Right to Possession of the \$52,000

Since the seized money was not found to be stolen or to be unlawfully used or intended for unlawful use, the HIDTA Unit had a statutory obligation to return the \$52,000 to the person legally entitled to its possession. Section 12-5-7(c). Turning the money over to the Unclaimed Property Division, in this Court's view, did not satisfy the HIDTA Unit's statutory obligation to return the seized money to the person legally entitled to its possession.

By claiming the \$52,000 was abandoned property and turning it over to the Unclaimed Property Division, the HIDTA Unit put the burden on Mr. Reyes to make a claim for the money by following the requirements of the Unclaimed Intangible and Tangible Property Statute, rather than satisfy its affirmative obligation to ascertain the person legally entitled to the money. *See* G.L. 1956 chapter 21.1 of title 33. Consequently, the Court finds that the State's arguments that the general civil statute of limitations barred Mr. Reyes's claim to the money, or that the Unclaimed Intangible and Tangible Property Statute placed a time limit on Mr. Reyes's ability to claim the \$52,000 at issue in this case, or that the burden to prove ownership of the money falls upon Mr.

Reyes are misplaced. *See* G.L. 1956 § 9-1-13(a); *see also* §§ 33-21.1-24 and 12-5-7(c).

In 1987, our Supreme Court noted that “the seizure of property from an individual is prima facie evidence of that individual’s entitlement to the property.” *State v. Shore*, 522 A.2d 1215, 1217 (R.I. 1987). The Court further noted that “[u]nless the government presents serious reasons to doubt the individual’s entitlement, and produces evidence to substantiate its claim, the individual need not come forward with additional evidence of ownership.” *Id.* (citing *United States v. Wright*, 610 F.2d 930, 939 (D.C. Cir. 1979)). In *Shore*, the defendant was seeking the return of fifty-six gold bars seized from him pursuant to a search warrant. After the subsequent criminal (drug) charges were dismissed, the defendant made a motion pursuant to § 12-5-7 to return the seized property. The Supreme Court found that the Court had jurisdiction to restore seized evidence to a defendant. *Id.*⁴

It seems clear to this Court that the \$52,000 at issue in this motion was seized from Mr. Reyes. Detective DelPrete asked Mr. Reyes for permission to search the apartment before the search was conducted. Mar. Tr. 27:1-4. Mr. Reyes acceded to the request, expressing his approval both verbally and in a written consent form. *Id.* at 27:3-4 (“we received a verbal and written consent for the apartment”); *see also id.* at 27:13-28:15 (Detective DelPrete explaining that Mr. Reyes signed the form in his presence); Information, Ex. 6 (Consent to Search Form); Information, Ex. 4 (Detective DelPrete Witness Statement) 1 (“Mr. Reyes complied, stating ‘No problem.’ . . . [he] granted members of the State Police and FBI HIDTA Task Force verbal permission to search the residence.”).

A search of the 420 Woodward Road apartment yielded a firearm and “also a plastic bag

⁴ In *DeMasi*, Defendant also made a successful motion to return seized property pursuant to § 12-5-7. *State v. DeMasi*, 447 A.2d 1139, 1140 (R.I. 1982).

with \$52,000 in cash in \$10,000 denominations wrapped in elastics.” (Mar. Tr. 29:20-24; *see also* Information, Ex. 7 (photos of the firearm and money).) Subsequent investigation indicated that the firearm had been stolen. (Information, Ex. 11 (Warwick Police Department, Incident Report).) Detective DelPrete asked Mr. Reyes about the firearm, which prompted Mr. Reyes to deny ownership. (Mar. Tr. 29:25-30:3 (“He denied any ownership.”).) Detective DelPrete also testified to his conversation with Mr. Reyes about the money. *Id.* at 30:4-9. In response to a question asking whether he had asked Mr. Reyes about the \$52,000 cash, Detective DelPrete said “[a]t least two times we spoke of that, and he disavowed all ownership of that currency.” *Id.* at 30:5-6. Detective DelPrete further testified that Mr. Reyes said that he did not know who else would have access to his closet or apartment. *Id.* at 30:12-15; *see also* R.I. R. Evid. 801(d)(2) (Statement by Party-Opponent). The money was thereafter seized, Mar. Tr. at 30:18-19, and Mr. Reyes was arrested and transported to the police station. *Id.* at 30:16-17 and 20-22.

Mr. Reyes was then charged with possessing a firearm after having been convicted of a crime of violence. *Id.* at 30:24-25; *see also* Docket (noting that the criminal complaint was filed on May 3, 2004). Mr. Reyes was advised of his rights and requested to speak to an attorney. *Id.* at 31:1-3. Detective DelPrete testified that Detective Kevin Barry asked Mr. Reyes to sign a property release, but that Mr. Reyes would not sign the form because the cash was not his. *Id.* at 31:4-6, 18-19.

At the station, Mr. Reyes signed a form acknowledging that he had been notified of, and understood, his pre-interrogation rights under the Fifth and Sixth Amendments as required by *Miranda*, 384 U.S. at 478-79. *Id.* at 31:20-32:24.

Clearly, police personnel considered that the apartment belonged to Mr. Reyes; clearly, police personnel concluded that the firearm found concealed in the attic above Mr. Reyes’s

bedroom closet and seized was in the possession of Mr. Reyes; and clearly, police personnel considered the \$52,000 found and seized from Mr. Reyes's bedroom closet containing only his shoes and his clothes to belong to Mr. Reyes; and clearly, the \$52,000 was seized from Mr. Reyes. As determined by our Supreme Court in *Shore*, the seizure of the \$52,000 by the HIDTA Unit from Mr. Reyes is prima facie evidence of Mr. Reyes's entitlement to the property. *Shore*, 522 A.2d at 1217. At the March 14, 2023 evidentiary hearing, the evidence presented by the State failed to rebut the prima facie evidence that Mr. Reyes is entitled to the \$52,000 in cash at issue in this case. This Court therefore finds that Mr. Reyes is the person entitled to the right of possession of the \$52,000 at issue in this case and hereby orders that the State shall forthwith present this Court's Order to the General Treasurer's Unclaimed Property Division, and that the State secure the return of the \$52,000 in seized property to Mr. Reyes.

IV

Conclusion

After a *de novo* determination of the August 15, 2022 decision and Order of the Magistrate upon which this Magistrate's appeal is directed, the Magistrate's decision denying Mr. Reyes's Motion to Return Seized Property is rejected in whole, and this Court **GRANTS** Mr. Reyes's Amended Motion for Return of Seized Property. Counsel shall prepare an order consistent with this Decision.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: State of Rhode Island v. Edwin Reyes

CASE NO: P2-2005-1100AG

COURT: Providence County Superior Court

DATE DECISION FILED: July 24, 2023

JUSTICE/MAGISTRATE: Montalbano, J.

ATTORNEYS:

For Plaintiff: John F. Perrotta, Esq.

For Defendant: John F. Cicilline, Esq.